IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

CRL.A.No. 1006 of 2007(A)

SC.406/2006 of ADDL. SESSIONS COURT (ADHOC)-II, KALPETTA

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APPELLANT:

PALANI, C.NO. 4720
CENTRAL JAIL, KANNUR

BY ADV. ADV.V.P.JOLY(STATE BRIEF)

RESPONDENT:

STATE OF KERALA

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 13-8-2007 , THE COURT ON 13/08/2007 DELIVERED THE FOLLOWING:

K.Thankappan, J.

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Crl. A. No. 1006 of 2007

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Dated this the 13th day of August, 2007

JUDMENT

Sole accused in S.C.No.406/2006 on the file of the Court of the Addl. Sessions Judge (Adhoc)-II, Kalpetta is the appellant. He faced trial for the offences punishable under section 8(1) and (2) of the Abkari Act. The prosecution case against the appellant is that he was found in possession of 35 packets each contained 100 ml. Karnataka made arrack. To prove the charge against the appellant, the prosecution examined PW1 to PW5 and Exts.P1 to P7 and MO1 were marked. After closing the prosecution evidence, the appellant was questioned under section Cr.P.C. He denied the prosecution allegation levelled against him and stated that he was arrested from his house. Relying on the evidence adduced by the prosecution, the trial court found that the appellant was guilty of the offences punishable under sections 8(1) and (2) of the Abkari Act and he was convicted thereunder and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/- and in default of

payment of fine to undergo rigorous imprisonment for a further period of six months.

2. To prove the case against the appellant, the prosecution mainly relied on the evidence of PWs.1 and 2. PW1 is the detecting officer and PW2 is the Excise Guard. PW1 stated that during patrol duty on 10-1-2006 he had received an information that the appellant was engaging in sale of arrack. He stated that they proceeded to the place of occurrence and when they reached at Veliyambam-Mankkadu road in front of the tea shop of Kunnappalli Thomas, they found the appellant coming towards them carrying a plastic cover and on examination the plastic cover contained 35 packets each contained 100 ml. Karnataka made arrack. On preparing Ext.P2 seizure mahazar, MO1 packets were recovered and samples were taken from two packets. He further stated that the appellant was arrested and registered a case against him. The evidence of PW1 is corroborated by the evidence of PW2. PW5, Excise Inspector, had given evidence that the samples which were taken from the packets by PW1 were analyzed and as per Ext.P7 chemical report the sample contained 29.75% of ethyle alcohol. This witness further stated that final charge has been laid against the appellant. The trial court after considering the evidence of PWs.3 and 4 found that PWs.3 and 4 were present at the place of occurrence and had

witnessed the seizure of arrack from the appellant. It has come out in evidence that the sample and residue were produced before the court on 11-1-2006. It is specifically noted in the list that the plastic cover in which the remaining packets of arrack and that two empty packets were sealed and labelled. The trial court found that the excise party had given each and every details in the seizure mahazar marked as Ext.P2 and when these aspects were taken into account, there was no ground to disbelieve the case of the prosecution that the appellant was found in possession of arrack.

3. The next question to be considered is regarding the quantum of punishment awarded against the appellant. It has come out in evidence that the appellant has abkari cases to his credit at Pulpally and Meppadi. Hence, this Court is of the view that there is no merit in the appeal. Therefore, the appeal stands dismissed confirming the impugned judgment.

K. Thankappan,
Judge.

K. Thankappan,J.

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Crl.A. No. 1006 of 2007

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Judgment

14-8-2007